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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,932	09/09/2003	David N. Ku	8537-3	3113
20792	7590	05/02/2006		
MYERS BIGEL SIBLEY & SAJOVEC PO BOX 37428 RALEIGH, NC 27627			EXAMINER WILLSE, DAVID H	
			ART UNIT 3738	PAPER NUMBER

DATE MAILED: 05/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/658,932

Applicant(s)

KU, DAVID N.

Examiner

Dave Willse

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 and 34-73 is/are pending in the application.
- 4a) Of the above claim(s) 8, 10-12, 27, 53-55 and 70 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9, 13-26, 28, 29, 34-52, 56-69, and 71-73 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

The present Office action is supplemental to that mailed on April 19, 2006. The shortened statutory period for reply is hereby reset to expire three (3) months from the mailing date of the present Office action. The examiner failed to indicate such on the PTOL-326 form of the prior Office action and thanks the Applicant for calling attention to this oversight on April 27, 2006. The examiner apologizes for the inconvenience to the Applicant. The following is repeated from the prior Office action:

Claims 8, 10-12, 27, 53-55, and 70 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on February 9, 2006.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-7, 9, 13-26, 28, 29, 34-52, 56-69, and 71-73 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. The particular range associated with “a compressive modulus of elasticity less than about 100 megaPascals” (e.g., claim 1, lines 2-3) is not found in the original disclosure, nor is such a range suggested by any disclosed example having a compressive modulus of elasticity of about 100 megaPascals (MPEP § 2163.05). Likewise, the limitation “compressive modulus of elasticity that is between about 1 MegaPascal

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to about 20 MegaPascals” (e.g., claim 48, lines 4-5) is not supported by the original disclosure, especially for the crystalline PVA hydrogel as claimed. In claim 3, line 2, the upper limit *neighborhood* of “*about 5 MPa*” (emphasis added) is not believed to have support. In claim 8, line 2, “a compressive modulus of elasticity that is not constant” is not mentioned in the original disclosure. Regarding claim 11, the lower limit *neighborhood* of “*about 1 Newton*” (emphasis added) is lacking in the original disclosure. In claim 40, line 3, the negative limitation “plateless” is absent in the original disclosure. *Similar problems exist in other claims.*

The Applicant has not *specifically* pointed out the support for *every* added claim limitation (MPEP § 714.02). Prior art may be applicable once the above problems have been corrected.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dave Willse whose telephone number is 571-272-4762. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott, can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Dave Willse
Primary Examiner
Art Unit 3738